of the holder and would not be within the traditional definition. But the possession of intoxicating liquor is not always illegal; everywhere it may be lawfully held for medicinal and sacramental purposes. See Wash., Laws 1917, c. 19 §§ 11, 12. Therefore, in a criminal case, the court might presume the possession to have been legal and refuse to admit evidence to the contrary, thus bringing the case within the accepted rules by a fiction. *State* v. *May* (1866) 20 Iowa 305. Such a fiction is merely a legalistic translation of the common-sense view that when the law must make a choice between protecting theft and illegal possession, it is wiser to protect the latter. *Commonwealth* v. *Rourke* (1852) 64 Mass. 397. Its use also renders nugatory a discussion of the possible contention that the illegality renders the liquor valueless and therefore not a possible subject of larceny. *People* v. *Cardis* (1915) 29 Cal. App. 166, 154 Pac. 1061; *Culp* v. *State* (Ala. 1834) 1 Port. 33. Without doubt the same result as the one in the principal case would be reached in any jurisdiction.

MUNICIPAL CORPORATIONS—INVALID BONDS—RECOVERY BY BONA FIDE PURCHASER IN QUASI CONTRACT.—The plaintiff was a *bona fide* purchaser from the transferee of the original holder of a municipal bond, issued in pursuance of a statute and ordinance, which were subsequently declared unconstitutional. In an action for money had and received, *held,* though the original holder could recover from the city, the plaintiff could not. *City of Henderson* v. *City Nat'l Bank of Evansville* (Ky. 1919) 215 S. W. 527.

Where invalid bonds are issued by a municipality, recovery by the purchaser in general assumpsit of his ill invested funds depends not upon a contract express or implied but upon the broad equitable principles of restitution; see NOTES, *supra,* p. 336; *cf.* Ames, Cases on Trusts 11, footnote; and the legal relations of the parties are determined not by their intention but by the rights and duties imposed by operation of law in furtherance of these principles. The original holder, at whose expense the city was unjustly enriched, has quasi-contractual rights against the city, distinct from any on the bond, but neverthless intimately associated with them. Whether the sub-vendee may recover against his vendor, the latter reimbursing himself from the city, *City of Henderson* v. *Redman* (Ky. 1919) 214 S. W. 809, or recover directly from the city as virtual assignee of the obligee's quasi-contractual claim against the city, might be of practical importance where the sub-vendee had purchased the invalid bond at a considerable depreciation, or where the vendor was financially irresponsible or insolvent. The transferee of a valid negotiable instrument may sue in general assumpsit instead of express assumpsit on the theory that there was a virtual assignment of all the payee's rights. *Penn.* v. *Flack & Cooley* (Md. 1831) 3 Gill & J. 369. In the case of realty it has been held that where one purported to convey a legal title, when in fact he had no legal title, the grantee acquired whatever equities his grantor possessed; *Cole* v. *Fickett* (1901) 95 Me. 265, 49 Atl. 1066; but in such a case the grantor quit-claimed all his interest in the real property, and the grant is easily construed to include his equitable interests. Where a mortgage is transferred without the debt, the transferee secures an equitable assignment of the debt. *Young* v. *Guy* (1882) 87 N. Y. 457. Another strong analogy to the instant case appears in a case where it was held that an assignee of a contract for necessaries made by a married woman under coverture could recover for their reasonable value. *Haas* v.

American Nat'l Bank (1906) 42 Tex. Civ. App. 167, 94 S. W. 439; but *cf. Montgomery* v. *Brown* (Pa. 1882) 1 Del. Co. Rep. 307. It would seem then that there is a strong equitable claim in the *bona fide* purchaser of the void bond to the quasi-contractual rights of the original holder against the city; and since the action against the city is legal in form and equitable in determining the extent of the city's liability, it would lead to fairer results to allow the *bona fide* purchaser to sue as equitable assignee, if he pleaded properly. That the *bona fide* purchaser has an adequate remedy against his vendor for money had and received, in which the measure of recovery is different from that of the original holder against the city, should not preclude him from this alternative remedy as equitable assignee. Our law has numerous instances of this alternative liability, as in the case of the *del credere* agent, see *Wallace* v. *Castle* (N. Y. 1878) 14 Hun 106, or of a bank with whom commercial paper has been deposited for collection. See *Mackersy* v. *Ramsays* (1843) 9 Clark & F. 818.

MUNICIPAL CORPORATIONS—REGULATION OF PUBLIC CEMETERIES.—A city ordinance forbade any person to dig, attend, or keep any grave in a public cemetery for compensation except under the direction and with the consent of the superintendent. *Held,* it was unreasonable to restrict the right of lot-owners to attend the grave to personal attention, and to give a subordinate official arbitrary authority to grant or deny permission to hired agents. *Ex parte Adlof* (Texas 1919) 215 S. W. 222.

An almost identical regulation was sustained in *Cedar Hill Cemetery Co.* v. *Lees* (1903) 22 Pa. Super. Ct. 405 as necessary to sustain a harmonious system in keeping the whole cemetery. This reasoning seems sound, and since the right to attend the grave is given because of the natural desire of relatives to thus express their feelings, *Ashby* v. *Harris* (1868) L. R. 3 C. P. 523, the distinction between principals and agents might be supported as an attempt to save the rights of those having other than pecuniary interest in the work. The rule is usually stated that a subordinate official can be given arbitrary power to grant or deny permission to engage in only those acts or occupations which might be prohibited altogether. See *Crowley* v. *Christensen* (1890) 137 U. S. 86, 94, 11 Sup. Ct. 13. But ordinances have been sustained where such consent was necessary to erect awnings, *Pedrick* v. *Bailey* (1858) 78 Mass. 161, speak in public parks, *Commonwealth* v. *Abrahams* (1892) 156 Mass. 57, 30 N. E. 79, erect any building, *Commissioners of Easton* v. *Covey* (1891) 74 Md. 262, 22 Atl. 266, remain in markets over twenty minutes, *Commonwealth* v. *Brooks* (1872) 109 Mass. 355, move buildings through public streets. *Wilson* v. *Eureka City* (1899) 173 U. S. 32, 19 Sup. Ct. 317. These acts would not appear to be ones that might be prohibited altogether. On the other hand ordinances have been held invalid where consent was necessary to hold parades, *Matter of Frazee* (1886) 63 Mich. 396, 30 N. W. 72, operate foundries, *etc.,* within city, *City of Montgomery* v. *West* (1907) 149 Ala. 311, 42 So. 1000, allow proprietor to enter saloon on Sunday, *Town of Newbern* v. *McCann* (1900) 105 Tenn. 159, 58 S. W. 114, maintain a laundry in a wooden building, *Yick Wo* v. *Hopkins* (1886) 118 U. S. 356, 6 Sup. Ct. 1064. The above-stated guiding rule would therefore seem to be only a useful phrase in clear cases; in others the court seems to exercise unlimited discretion on the question of reasonableness, and the principal case might well have been held either way.